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Executive Secretary
Marine Safety Counsel (G-LRA)
(CGD97-050)
U. S. Coast Guard
2100 2nd Street, S.W.
Rm 3406
Washington, D.C. 20593-0001

Re: Revision of Deepwater Port Regulations (CGD 97-050)

Dear Sir/Madam:

This letter is submitted in response to the advance notice of proposed rulemaking ("ANPRM") published by the Coast Guard in the Federal Register on August 29, 1997 seeking data, views or arguments regarding changes to the Deepwater Port Regulations.¹ LOOP is the only deepwater port licensed under the Deepwater Port Act of 1974 (the "Act"). It was licensed by the Secretary of Transportation (the "Secretary") in 1977 and commenced operations in 1981. LOOP transports more than 13 percent of all crude oil imported into the United States. It is thus uniquely qualified to comment upon the question posed in the ANPRM.

Background

The Act creates a three-tiered regulatory structure that is unique to deepwater ports. First, the Act requires that the Secretary promulgate regulations applicable to all deepwater ports. Second, the Act also requires that each deepwater port be individually licensed. Third, the Regulations require that each deepwater port have an operations manual. Thus, in addition to the Act, LOOP is regulated and governed by (i) the Regulations, (ii) its license, and (iii) its operations manual. Such a three-tiered structure can function well, but only if all three elements are structured and coordinated to create a coherent whole.

As originally enacted in 1974, the Act provided no hierarchy or guidance as to the allocation of subjects that should be addressed in regulations, licenses and operations manuals. Moreover, when the Regulations, LOOP's license and LOOP's operations manual were first drafted, no one had the benefit of practical experience in the operation and regulation of deepwater ports. Perhaps as a result, the three documents contain overlapping provisions, many

¹ 33 CFR parts 148-150 (the "Regulations").

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of which impose burdensome requirements upon LOOP that **do** not apply to comparable oil transfer or offshore facilities.

The Deepwater Port Modernization Act

Recognizing **that** his burdensome regulatory system required reform, Congress passed last year the Deepwater Port Modernization Act.² As noted by the Coast Guard in the ANPRM, the Modernization Act effectively requires that the Coast Guard amend the existing Regulations. The Modernization Act also provides criteria for required regulatory amendments.

First, the Modernization Act provides as one of its purposes to “assure that the regulation of deepwater ports is not more burdensome or stringent than necessary in comparison to the regulation of other modes of importing or transporting oil.” Id. at § 502(a)(2). Thus, in amending the Regulations, the Coast Guard must consider regulations applicable to other oil transportation facilities to assure that deepwater ports are not subject to disproportionately or unnecessarily burdensome requirements. Coast Guard Rear Admiral North recently explained in testimony before the House Subcommittee on Coast Guard and Transportation that the Coast Guard is using risk-based evaluation as a part of the Coast Guard’s regulatory reform efforts with the goal of reducing regulations to those necessary to achieve an acceptable level of safety. LOOP submits that the burdens imposed by the existing Regulations are disproportionate to the actual risks posed by deepwater port operations. A risk-based evaluation of **these** operations should result in the identification of individual regulations that can be deleted or revised accordingly.

Another purpose of the Modernization Act was to “promote innovation, flexibility, and efficiency in the management and operation of deepwater ports by removing or reducing any duplicative, unnecessary, or overly burdensome Federal regulations or license provisions.” Id. at § 502(a)(4). Thus, in amending the Regulations, the Coast Guard must delete or revise regulations that are duplicative, unnecessary or overly burdensome. This same result is required by President Clinton’s Regulatory Reinvention Initiative as stated in the President’s March 4, 1995 Memorandum for Heads of Departments and Agencies.

Finally, the Modernization Act also amended the Act to rationalize the regulation of deepwater ports. Thus, section 4(e)(1) of the Act now provides that:

“to the extent practicable, conditions required to carry out the provisions and requirements of [the Act] shall be addressed in license conditions rather than by regulation and, to the extent practicable, the license shall allow a deepwater port’s operating procedures to be stated in an operations manual . . . **rather** than in detailed and specific license conditions or regulations; except that basic standards and conditions **shall be** addressed in regulations.”

² Pub. L. W-324, 110 Stat. 3901, 3925 (Oct. 19, 1996) (the “Modernization Act”).

As explained in the Conference Report, this section of the Modernization Act “restructures the current three-tiered approach of licensing, operations manuals, and regulations into an approach that relies on licenses and operations manual.”³ Thus, with the exception of basic standards and conditions which are appropriately addressed in the Regulations, the Act now provides that a deepwater port’s license and operations manual, rather than regulations, are the preferred vehicle or source of regulatory authority.

In light of the Modernization Act, the following principles should guide the Coast Guard as it amends the Regulations.

Avoid Inconsistency. Clearly, in amending the Regulations, the Coast Guard must avoid any inconsistency with requirements imposed upon LOOP by its license or operations manual, Insofar as all three sources of regulatory authority are binding upon LOOP, any inconsistency between them puts LOOP in the untenable Position of violating some provision regardless of its actions or **policy**.

Avoid Redundancy. Each source of regulatory authority exists for a distinct reason and should address a unique set of governmental concerns. Thus, there is no reason why a requirement included in LOOP’s license should be repeated as well in the Regulations. The subjects covered in the Regulations may overlap with the subjects addressed in an individual port’s operations manual because the Regulations are intended to provide basic standards, while an operations **manual** is to describe how those standards are implemented by a particular port. However, even if the subjects addressed in these two documents are the same, the substantive provisions of each should be distinct.

Avoid “Command and Control” Style Reaulation. President Clinton’s Regulatory Reinvention Initiative directs federal agencies to review and revise regulations so as to achieve intended goals in the most **efficient** and least intrusive manner, incorporating performance-based standards, market mechanisms and privately developed industry standards. The President’s March 4, 1995 Memorandum for Heads of Departments and Agencies instructs agencies like the Coast Guard to favor private sector market mechanisms whenever they can better achieve the public good presently envisioned by regulations, and to allow private business to set its own standards when practicable. Admiral North, in his recent testimony before Congress, explained that the Coast Guard is adopting performance-based standards in lieu of prescriptive regulations with the goal of providing **regulated** entities with more flexibility when complying with regulations. This is precisely the approach that should be followed as the Coast Guard proceeds with its review of the Regulations here.

³ House Report 104-854, Coast Guard Authorization Act of 1996, Conference Report, Sept. 27, 1996 at 113. See also, Deepwater Port Modernization Act, House Report 104-692 at 4 (“detailed or facility-specific conditions and requirements...are more appropriate for inclusion in the license or operations **manual** rather than the more cumbersome regulations.”).

What Goes Where?

Clearly, given the three sources of regulatory authority applicable to a deepwater port, there must be some logic or hierarchy pursuant to which the subjects are addressed in one document rather than another. In addition to the hierarchy introduced by the Modernization Act, the very nature of regulations, a license and an operations manual dictate the subject matter or substance that should be contained in each.

Regulations. The Regulations apply to all licensed deepwater ports. Thus, they should not be drafted with any particular port in mind. The Act now provides that the Regulations shall contain basic standards and conditions. This is appropriate insofar as the implementation of such basic standards and conditions can be prescribed in each individual port's operations manual. Thus, the Regulations should contain only basic standards and conditions that are appropriately imposed upon a broad class of deepwater ports,

License. Every nature, a deepwater port's license is specific to the particular facility and the issues and policies raised by its operations. Thus, unlike the Regulations, a license should be tailored to the individual facility. In keeping with the President's regulatory reinvention initiative, a deepwater port license should also avoid detailed and intrusive "command and control" type regulation whenever market-based or performance-based standards can achieve the same goal.

Operations Manual. The Act now provides that, to the degree practicable, operating procedures should be addressed in a deepwater port's operations manual. By its very nature, such a manual is specific to the unique characteristics and operations of each deepwater port. Moreover, the operations manual is reviewed and approved by local Coast Guard officials. These are the individuals most familiar with operations at the port and are thus in the best position to make informed judgments as to proposed amendments. It is therefore appropriate that operational issues relating to such a port be addressed in its operations manual.

Questions Posed in the ANPRM

LOOP provides below its views with respect to the six individual questions posed in the ANPRM.

- **What provisions can be moved from the Regulations and placed in license conditions?**

The Report of the House Transportation Committee on the Modernization Act provides guidance to the Coast Guard regarding matters that should be addressed in the Regulations, in a deepwater port's license, and in its operations manual! It emphasizes that the Regulations

*H.Rep. 692, 104th Cong., 2d Sess (1996).

should contain only basic standards and conditions, and lists subjects that are more appropriately included in a license or operations manual. Based upon the Act and this legislative history LOOP has identified no provisions of the existing Regulations that are more appropriately included in each deepwater port's license. While many of the existing regulations should be deleted or simplified, none of them address the type of site-specific conditions that are appropriate for inclusion in a deepwater port license.

- What provisions can be moved from the Regulations to operations manuals?

LOOP submits that the **following** provisions of the Regulations are so detailed, or so clearly relate to the day-to-day operations, that they are more appropriately addressed in a deepwater port's operations manual:

Section	Subject
\$150.123	weather monitoring
§150.201-217	Personnel requirements
§150.341-342	personnel requirements
§150.305-311, 313(a), (b) & (c)	vessel routing and clearance
§150.337(c)	tankers in the safety zone
\$150.413	oil transfer
§150.415	requirements for connections
\$150.419	stopping transfer operations
\$150.423	limitations
\$150.503	maintenance of equipment
§150.519	emergency drills
§150.751, 755	record retention and availability

- What Regulations are obsolete, unnecessary, redundant, or restrictive?

LOOP provides below a chart listing those sections or subsections of the Regulations which it believes are obsolete, unnecessary, redundant or restrictive. The third column of this chart, entitled "Reason," provides a brief summary of the reason why LOOP believes the provision should be deleted from the Regulations. To the degree the Coast Guard believes that certain of the subjects listed below should continue to be addressed, LOOP submits that the subject should be addressed in the operations manual.

Section	Subject	Reason
149.206	Construction	Based on standards for vessels that are inappropriate to an offshore platform
149.211	Emergency Equipment	Duplicative of other more detailed sections

149.215	Interference with helicopter operations	Unnecessary in light of sections relating to design standards and engineering specifications
149.313 & 149.315	Oil Transfer Alarm	Duplicative of general alarm and public address requirements, all of which should be addressed in the operations manual
149.319	Discharge containment & removal	Superseded by OPA requirements - addressed in facility's response plan
149.45 1479	Fixed fire main system for water	Unnecessary for OCS and oil and hazardous material in bulk (" OHMB ") facilities and similarly unnecessary for deepwater ports
149.481-483	Other fire extinguishing systems	Unnecessary for OCS and OHMB facilities and similarly unnecessary for deepwater ports
149.491	Fire detection & alarm systems	Unnecessary for OCS and OHMB facilities and similarly unnecessary for deepwater ports
149.517	Fireman's outfits	Unnecessary for OCS and OHMB facilities and similarly unnecessary for deepwater ports
149.539	Portable lights	Overly intrusive and detailed regulation requiring selection and use of specific equipment
149.793	Markings for piles	Not applicable to deepwater ports because of water depth
150.125	Water Depth Measurements	Deepwater ports are designed, located and approved with a stable ocean floor. Operations would be suspended by COTP if water depth conditions require.
150.127	Environmental Monitoring	The existing section merely requires compliance with the operations manual and is thus redundant of \$150.109 and unnecessary.
150.341 150.342	Mooring Master Asst. Mooring Master	Duplicative of personnel requirements, which should be included in the operations manual, not the Regulations
150.407 and .409	Periodic tests and inspections: discharge containment equipment/removal material on equipment	Provided for in OPA regulations
150.421	Displacement of oil in SPM -OTS with water	Impractical based on deepwater port experience.

150.504 .505 .507	Fire main system Fire pump Fire hose	Mirrors proposed deletion of Fire main system requirements of Part 149
150.513	Sanitation	Regulation unnecessary in light of accepted industry standards
150.516	Aircraft operations	Impractical and unnecessary. Other OCS and OHMB facilities are not subject to comparable requirements.
150.521 150.523	Housekeeping Illumination	Regulation unnecessary in light of industry, OSHA and insurance standards
150.525	Emergency Medical Technician	Unnecessary in light of availability of medical evacuation by helicopter. Other OCS and OHMB facilities are not subject to comparable requirements.
150.707	Oil Throughput Report	Deepwater Port Liability Fund superseded by OPA
150.713	Sabotage	Unnecessary in light of industry practice and other Federal and State laws
150.757	Oil Throughput Log	Redundant of other Federal requirements, e.g., Customs

- Should the OCS regulations (33 C.F.R. Subchapter N) be applied to deepwater ports?

Upon casual examination, OCS facilities may appear to resemble deepwater ports like LOOP. This resemblance is only superficial, however. OCS facilities engage in the exploration, production and development of OCS resources. Thus, OCS facilities include drilling rigs (including **MODU's**, jack-up rigs and others) and production facilities and platforms of various configurations. Deepwater ports do not engage in the exploration for or production or development of OCS resources. They merely accept crude oil for further transportation. Thus, both the activities conducted on a deepwater port's offshore platform and the environmental risks created by those activities are different than the corresponding activities and risks of OCS facilities. It follows that there is no reason why the Coast Guard regulations of OCS facilities and operations **should** apply to deepwater **ports**.

There is however, one way in which deepwater ports resemble **OCS** facilities: the physical structure of the offshore platform itself. Thus, with regard to a port's offshore platform, the Regulations might appropriately mirror or incorporate standards generally applicable to OCS facilities. Indeed, the Modernization Act makes it clear that the regulations applicable to deepwater ports should not be more burdensome or onerous than those applicable to analogous facilities. With this in mind, LOOP has prepared the following list of sections and subsections **from** the Regulations that should be amended to incorporate or adopt standards applicable to OCS facilities.

Section	Subject	Corresponding OCS Requirement
149.421	Means of escape from platform	§143.101
149.44 1	Open sided deck, deck opening, catwalk and helicopter pad protection	\$143.110
149.515	Fire axes	Two axes only
149.52 1,523 and 525	Lifeboats and inflatable rafts : general	Delete 2 lifeboat requirement; allow for use of life floats, require capacity of maximum personnel, not twice that number.
149.527	Portable radio apparatus	§144.01-40

- Should the **regulations** for facilities transferring oil or hazardous materials in bulk (33 C.F.R. Part 154) be **applied** to deepwater -ports?

Coast Guard regulations found at 33 C.F.R. Part 154 apply to and govern primarily shoreside terminals. These facilities are quite distinct from deepwater ports and there is **no** reason why the regulations applicable to them should necessarily apply to deepwater ports. Similarly, because of a port's distance from land, significant water depth, etc., the environmental risks of delivering oil to a deepwater port are very different than the environmental risks posed by an **oil** spill at a shoreside terminal. Here too, there is little or no reason why regulations applicable to one type of facility should apply also to another. Both types of facilities do receive crude oil or hazardous substances in a transfer operation **from** vessels. In this limited respect, there may be some wisdom or value in adopting or incorporating in the deepwater port Regulations provisions or standards found in 33 C.F.R. Part 154. LOOP provides below a chart listing those provisions from the Regulations that may appropriately be amended so as to adopt or incorporate such standards.

Section	Subject	Corresponding HMB Requirement
149.317(a)	Communications equipment	154.560
149.501(a)	Portable and semiportable fire fighting equipment	154.735
150.105	Operations manual, general	154.300
150.107	Operations manual, amendment	154.320
150.417	Declaration of Inspection	156.150

- Should the environmental monitoring plan be revised?

The present Regulations do not contain substantive environmental monitoring requirements, nor should they. The requirement that LOOP conduct environmental monitoring is contained in its license. This is entirely appropriate since each deepwater port's environmental monitoring obligations will depend upon the unique features of its design and location.

The only provision of the existing Regulations that relates to environmental monitoring is found at 33 C.F.R. §150.127. This section **merely** requires that the licensee monitor the environment in accordance with the monitoring program set forth in the operations manual for the port. This section is completely superfluous and redundant, since each licensee is required to comply with **all** of its operations manual. **See, 33 C.F.R. §150.109.** Beyond this specific comment, LOOP believes that the issue of environmental monitoring requirements should not be addressed in the Regulations and thus is not an appropriate subject for the present **rulemaking**.

- What other regulations should the deepwater port Regulations be designed like?

As noted above, the Modernization Act provides that LOOP should not be subject to more stringent or burdensome regulation than other similar facilities. For this reason, and also to simplify the Regulations themselves and the Coast Guard's oversight role, LOOP believes that standards or requirements established in other bodies of Coast Guard regulation may appropriately be adopted or incorporated in the deepwater port Regulations. This is perhaps most obvious with respect to the unnecessarily detailed requirements presently applicable to deepwater ports with respect to lighting and beacons. LOOP recommends that these detailed regulations be deleted and replaced with a simple reference to the general standards and requirements contained at 33 C.F.R. Subchapter C. These and other recommended changes are summarized in the chart below.

Section	Subject	Standard to be Incorporated from other Coast Guard Regulations
149.217	First Aid Station	33 C.F.R. §144.01-30
150.333	Advance Notice of Arrival	33 C.F.R. §160.207 and 211
150.509	Personal Protection Equipment	33 C.F.R. Part 142 Subpart B
150.527	First Aid Station	33 C.F.R. §144.01-30

149.703	Effective intensity	Delete and require compliance with 33 C.F.R. Subchapter C .
149.72 1-729	Specifications for lights	Delete and require compliance with 33 C.F.R. Subchapter C .
149.751	Obstruction lights on platform	Delete and require compliance with 33 C.F.R. Subchapter C .
149.755	Characteristics	Delete and require compliance with 33 C.F.R. Subchapter C .
149.757	Intensity	Delete and require compliance with 33 C.F.R. Subchapter C .
149.759	Leveling	Delete and require compliance with 33 C.F.R. Subchapter C ,
149.775	Intensity of lights	Delete and require compliance with 33 C.F.R. Subchapter C .
149.799	Fog signal	Delete and require compliance with 33 C.F.R. Subchapter C .
150.601-611	Aids to navigation	Delete and require compliance with 33 C.F.R. Subchapter C .

In addition, in keeping with the President's Regulatory Reform Initiative, LOOP believes that the Coast Guard should, to the degree practicable, attempt to incorporate accepted industry standards. In so doing, the Coast Guard will bring regulatory standards into line with existing industry standards, thus alleviating somewhat the burden of complying with governmental regulations. By incorporating industry standards, the Coast Guard will also introduce a greater level of flexibility insofar as changes in industry standards can then quickly and easily be incorporated into corresponding regulatory requirements. The chart below summarizes those sections of the Regulations which LOOP believes can or should be amended so as to incorporate industry standards.

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Section	Subject	Industry Standard
149.209	SPM's	Provide for issuance of ABS Classification Certificate by IACS member.
149.402	Equipment not required on a PPC	ABS Classification
149.507	Marking of fire extinguishers	ANSI 10 and 10A
149.513	Landing area with fueling capacity	NFPA code 407
150.405(b) and (c)	Periodic tests and inspections: OTS components	ABS Classification

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Amendment of the Regulations **is** required by the Modernization Act. The substance **of** the resulting amendments should be dictated by the precepts of President Clinton's Regulatory Reinvention Initiative and by the intent of Congress in enacting the Modernization Act itself. The House Transportation Committee Report on the Modernization Act states that "**a** basic purpose of the bill is to streamline and improve the current system, which can involve multiple layers of regulations, conditions, and requirements."

The Modernization Act was enacted more than a year ago. **We** ask that the Coast Guard act expeditiously to complete the present rulemaking so that LOOP can benefit from the regulatory reform desired and directed by Congress.

Sincerely,



R. C. Thompson
President